IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.1013 OF 2004

NI-PLAST INDIA).. Appellants

Versus

Canal Plast).. Respondents

Mr.B.P.Apte with Mr.P.M.Gore for the Appellants.

Mr.S.S.Patwardhan for Respondent No.1(a).

CORAM: SMT.NISHITA MHATRE, J.

DATED: 14TH DECEMBER 2004

P.C.:

. The main contention of the Appellants is that Defendant No.1-Respondent No.1 herein has infringed the patent rights granted to Milind Raghunath Kulkarni, a partner of the Appellant firm, under the Patent Act, 1970. According to the Appellant, Appellant No.1 has patented the product known as "Improved Flume for accurate measurement of water flowing through channels". The Appellant No.1 claims that he has patented the improved flume for accurate measurement of water levels by using pre-fabricated lining on both sides of the flume which is made of fibreglass. A chamber is provided on one side of the upstream of the flume. A pipe is provided on the bottom which connects the chamber which has water flow through flume. A float

arrangement has also been provided in the chamber which records the level of the water with the help of a recorder. The Appellants claim that Defendant No.1 has manufactured the same product with certain variations. The Defendant No.1 has used the same fibreglass material which runs along the brick masonry walls as a device for measuring the water level.

2. There is no dispute that a flume, which is an artificial channel of water, was invented by Dr.Parshall and has been in use by the public. It appears that although the Plaintiffs and the Defendants have both improved on the flume made by Dr.Parshall or the original flume, prima facie both the flumes are different as recorded by the trial Court. The Plaintiffs have not been able to establish prima facie that the flumes are the same or that Defendant No.1 has infringed on the patented rights of the Plaintiffs. I see no reason to interfere. Dismissed.

3. Since the question involved is important, the trial Court is requested to dispose of the Suit by 31st December 2005.